ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MB Docket No. 03-41
Table of Allotments,	)	RM-10642
FM Broadcast Stations.	)	
(Lincoln City and Monmouth, Oregon)	)	

To: The Chief, Audio Division, Media Bureau

COMMENTS OF RADIO BEAM, LLC

Radio Beam, LLC ("Radio Beam"), the licensee of KSND(FM), Lincoln City, Oregon, by its attorneys, hereby comments on the above-captioned proceeding by which Radio Beam requests (i) deletion from the FM Table of Allotments of Channel 236C2 at Lincoln City, Oregon, (ii) addition of Channel 236C3 at Monmouth, Oregon, and (iii) modification of the license of KSND(FM) to specify Monmouth as its community of license, all as proposed in Radio Beam's petition for rulemaking filed on November 19, 2002. As explained below, Radio Beam's petition as well as the Commission's *Notice of Proposed Rulemaking*, MB Docket No. 03-41 (rel. Feb. 18, 2003) ("*NPRM*") both support the grant of this petition. Radio Beam will file an application for Channel 236C3 at Monmouth if the channel is allotted to that community, and, upon grant of that application, will construct facilities as authorized.

Radio Beam's proposal conforms with the Commission's policy whereby, in a rule making, the Commission may modify an FM station's license to specify a new community of license without affording interested parties an opportunity to file competing expressions of interest. *See Modification of FM and TV Authorizations to Specify a New Community of License,*

4 FCC Rcd 4870 (1989) ("*Community of license Change Order*"), *recon. granted in* ***pari,*** 5 FCC Rcd 7094 (1990).

Radio Beam's petition set forth in detail the features of Monmouth that make it an identifiable community deserving of a first local FM service. Monmouth has a population of 7,741 persons according to the 2000 US Census, was incorporated in 1880, has its own Zip Code, post office, library and university (Western Oregon University). Monmouth has a local government including a Mayor, a six-member City Council and various city officials. Monmouth is served by its own local fire and police departments, and its own water system. Radio Beam's petition also fully described Monmouth's commercial and civic enterprises, including various churches, financial institutions, medical practitioners and facilities, schools and conimercial establishments. *See* Petition for Rulcmaking, at 2-3.

Radio Beam's petition also established that the Channel 236C3 allotment in Monmouth is mutually exclusive with KSND(FM)'s existing allotment of Channel 236C2 in Lincoln City. The engineering statement submitted with Radio Beam's petition indicated that although Channel 236C3 can he allotted to Monmouth in conformity with the minimum spacing requirements of the Commission's rules, the proposed Monmouth allotment would be short spaced with the current Lincoln City allotment. Because the proposed Monmouth facilities would not encompass any urbanized areas, Radio Beam was not required to provide a ***Tuck*** analysis. *See* Petition for Rulcmaking, at 3-4; *Headland, Alabama, and* ***Chattahoochee, Florida,*** 10 FCC Rcd I0352 (1995), citing *Faye* ***and*** *Richard* ***Tuck,*** 3 FCC Rcd 5374 (1988).

Finally, Radio Beam's petition established that the proposed reallotment would result in a preferential arrangement of allotments pursuant to the Commission's priorities.[1] Retaining the Channel 236C2 allotment at Lincoln City would serve only priority (4), other public interest matters, while allotting Channel 236C3 to Monmouth would serve priority (3) by permitting the addition of a first local transmission service in Monmouth. The engineering statement submitted with Radio Beam's petition demonstrated significant public interest benefits associated with the proposed reallotment, including (i) a net service gain of 164,339 persons, (ii) the retention in Lincoln City of two full-time local transmission services, and (iii) coverage by each of four stations of 100% of the loss area, with additional stations covering portions of that area, together ensuring that the entire loss area will receive five or more services and therefore be "well-served". *See* Petition for Rulemaking, at 4-6.

The Commission's *NPRM* proposes amending the table of allotments as requested by Radio Beam's petition. The *NPRM* notes the mutual exclusivity between the current and proposed allotments, the preferential arrangement of allotments proposed in the petition, the first service provided to Monmouth and the fact that no portion of any urbanized area is covered by the proposed reallotment. *See NPRM,* at ¶¶ 2-4.

In a footnote in the *NPRM*, the Commission points out that while the vast majority of the residents in the loss area would be well-served, retaining at least five reception services, an FCC staff engineering analysis revealed that 1,024 people within a 47 square kilometer area would be reduced from five to four reception services. *See* NPRM, at fn. **4.** The attached engineering statement indicates, as did the engineering statement submitted with the petition for rule making,

[1] The Commission's allotment priorities are (1) First full-time aural service; (2) Second full-time aural service; (3) first local service; and (4) Other public interest matters. Equal weight is given to priorities (2) and (3) *See Community of License Change Order*, 4 FCC Rcd at 4876. fn. 8.

that according to Radio Beam's analysis, all portions of the loss area will continue to be well-served after (lie proposed reallotment. *See* Engineering Statement of Hatfield & Dawson ("Engineering Statement"), Loss Area Analysis Figure.

The basis for the perceived loss of a reception service in the Commission's engineering analysis may be due to the plotting of the coverage contour of KPPT-FM, Toledo, Oregon. *See* Engineering Statement, at 3. A construction permit was filed on May 23, 1997 for Conimission authority to move KPPT-FM's transmitter site 13 **km** from its current site. *(See* FCC Filc No. 19970523IH.) Although that application was granted, and an application for license to cover was filed (see FCC Filc No. 19990112AAO), the license application was never granted, and was in fact dismissed on June 14, 2002. The construction permit expired on January 25, 2000, but apparently still appears as outstanding in at least one Commission database. The station currently operates pursuant to a subsequently filed construction permit and covering license (see FCC File No. BPH-20010820AAC and FCC Filc No. BLH-20011204ABC, respectively); the transmitter specified in those authorizations is used in the attached Engineering Statement.

Another possible basis for the perceived loss of a reception service in the Commission's engineering analysis may be due to the facilities assumed for KRKT-FM, Albany, Oregon. KRKT-FM is a Class CO facility. It is Radio Beam's understanding that Commission practice is to base coverage contours on maximum facilities for all non-Class C stations operating on non-reserved channels – actual facilities are used only for Class C stations. *See* Engineering Statement, at 1. Radio Beam submits that KRKT-FM's coverage contour should be based on the station's maximum facilities as a Class C0 station.

Even accepting the Commission's analysis, however, the public interest benefits resulting from the proposed reallotment far outweigh the minimal loss of service. As discussed above,

alloting Channel 236C3 to Monmouth will provide a substantial, independent community with its first local service and will allow Lincoln City to retain two full-time local transmission services. These benefits outweigh the perceived reduction from five to four reception services for 1,024 people in the loss area. In *Nogales, Vail and Patagonia, Arizona*, 16 FCC Rcd 20515, 20519 (2001), the Conimission amended the table of allotments to provide first local services to Vail and Patagonia, Arizona, notwithstanding the loss of a fifth fulltime reception service to 10,342 people. *See id.* at ¶ 9. The Commission stated that, "proposals to provide a first local service . . . are preferred under priority three and prevail over the population that would receive less [than] five fulltime services, which is considered under priority four." *Id.* Similarly, the public interest benefits of providing Monmoutli with its first local service outweigh the "other public interest matters" associated with 1,024 individuals who may receive four rather than five reception services.

CONCLUSION

As set forth in Radio Beam's petition, Monmouth, Oregon is an incorporated city of 7,741 residents deserving of a first local transmission service. By relocating KSND(FM) to Monmouth, Radio Beam proposes a net service gain of well over 160,000 persons. The new allotment is mutually exclusive with KSND(FM)'s existing facilities in Lincoln City and would result in a preferential arrangement of the allotments. Further, according to Radio Beam's analysis 100% of the persons currently receiving predicted service from KSND(FM) would remain well-served by other existing services. Assuming, however, that there would be loss of a fifth service to a small number of persons as the Commission has calculated, Radio Beam has nonetheless established that the public interest benefits of the proposed reallotment outweigh any

such loss. Finally, Radio Beam has reiterated its intention to file an application for Channel 236C3 at Monniouth if the channel is allotted to that community.

Accordingly, the Commission should adopt the proposal in its *NPRM*, delete Channel 236C2 at Lincoln City, add Channel 236C3 at Monmouth and modify KSND(FM)'s license to specify Monmoutli, Oregon as its community of license.

Respectfully submitted,

RADIO BEAM, LLC

By: _____
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April 11, 2003

CERTIFICATE OF SERVJCE

I, Wendy Marcus, a secretary in the law firm of Wiley Rein & Fielding LLP, do hereby certify that true copies of the foregoing "Comments of Radio Beam, LLC" were sent this 11th day of April, 2003, by hand delivery, to the following:

John Karousos
Assistant Chief, Audio Division
Media Bureau
Federal Communications Commission
236 Massachusetts Avenue, NE
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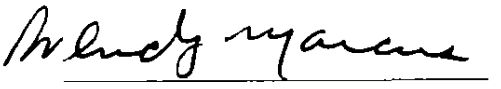

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Engineering Statement

This Engineering Statement has been prepared on behalf of Radio Beam, LLC ("Radio Beam"), licensee of station KSND Channel 236C2 Lincoln City, Oregon, in support of Comments to be filed in MB Docket No. 03-41. In that proceeding, Radio Beam has proposed the substitution of Channel 236C3 for Channel 236C2 at Lincoln City, the reallotment of Channel 236C3 to Monmouth, and the modification of the license of KSND to specify operation on Channel 236C3 at Monmouth.

A detailed study has been undertaken to identify any underserved areas which might be created by the proposed reallotment plan. In determining reception service provided by FM stations, the area of service circumscribed by the station's 60 dBu (1.0 mV/m) signal contour was considered, assuming 1) actual facilities for non-commercial stations operating on reserved channels, 2) maximum facilities for the class of station for stations (other than Class C stations) operating on non-reserved channels,' and 3) minimum or existing Class C facilities, whichever is greater, for Class C stations. For clear channel Class A **AM** stations, the service area was defined by the station's 0.5 mV/m groundwave contour, based on its licensed facilities. For all other classes of full-time AM stations, reception service was defined as that service received within a station's nighttime interference-free contour. See *Meeker and* Craig, Colorado, 15 FCC Rcd 23858 (2000), Stamps and Fouke. Arkansas, 14 FCC Rcd 10533 (1999). *Silverton* and *Bayfield,* Colorado, 14 FCC Rcd 4071 (1999). *Malvern* and Bryant, Arkansas, 13 FCC Rcd 8426 (1998). and others.

Each of the following AM and FM stations provides service to all or a portion of the loss area. The letter preceding the station call letters are used to identify the contours on the attached map exhibit.

'This includes Class CØ stations, which have been considered to be operating with maximum facilities of 100 kW at 450 meters HAAT.

Stations Providing Service to the Lincoln City Loss Area

A	KLCC-FM	209C	Eugene	
B	KLCO-FM	213C3	Newport	
C	KWAX-FM	216C1	Eugene	
D	KRRA-FM	217A	Newport	(CP)
E	KNCU-FM	224C3	Newport	
F	KKNU-FM	226C	Springfield-Eugene'	
G	KTIL-FM	231C3	Tillamook[3]	
H	KMGE-FM	233C1	Eugene	
I	KZEL-FM	241C	Eugene	
J	KCRF-FM	244C1	Lincoln City	
K	KSHL-FM	248C2	Gleneden Beach	
L	KNRQ-FM	250C	Eugene	
M	KODZ-FM	256C	Eugene	
N	KRKT-FM	260CØ	Albany	
O	KPPT-FM	264C2	Toledo[4]	
P	KFLY-FM	268CØ	Corvallis	
Q	KEHK-FM	272C1	Brownsville	
R	KYTE-FM	274C1	Newport	
S	KXPC-FM	279C	Lebanon	
T	KDUK-FM	284C	Florence	
U	KDEP-FM	288C3	Depoe Bay[5]	
V	KLOO-FM	292C	Corvallis	
W	KHPE-FM	300C	Albany	
X	KORC-AM	820 kHz	Waldport	(NIF = 17.7 mV/m)
Y	KPPT-AM	1230 kHz	Toledo	(NIF = 25.8 mV/m)
Z	KNPT-AM	1310 kHz	Newport	(NIF = 6.6 mV/m)
AA	KBCH-AM	1400 kHz	Lincoln City	(NIF = 21.9 mV/m)

[2]Under a proposal filed in MB Docket No. 02-136, Channel 227C would be substituted for Channel 226C currently in use by KKNU, at the present KKNU coordinates. That proposal, if adopted, would have no effect on the analysis described in this engineering statement.

[3]Under a proposal filed in MB Docket No. 02-136, Channel 232C3 would be substituted for Channel 231C3 currently in use by KTIL, at the present KTIL coordinates. That proposal, if adopted, would have no effect on the analysis described in this engineering statement.

[4]Under a proposal filed in MB Docket No, 02-255, KPPT Channel 264C2 would be reallotted from Toledo to Depoe Bay, at the present KPPT coordinates. That proposal, if adopted, would have no effect on the analysis described in this engineering statement.

[5]Under a proposal filed in MB Docket No. 02-255, KDEP Channel 288C3 would be reallotted from Depoe Bay to Garibaldi as Channel 288A, at a new transmitter site. That proposal, if adopted, would not reduce below five the number of remaining services in any portion of the Lincoln City loss area.

It should be noted that several other stations operate from the present KSND 236C2 Lincoln City transmitter site at Otter Crest. Two of these stations, KCRF 244C1 Lincoln City and KYTE 274C1 Newport, are of a higher class than the present operation of KSND, and completely encompass the present service area of KSND.

Two other stations located at Otter Crest, KSHL 248C2 Gleneden Beach and KPPT 264C2 Toledo, are of the same class as the present operation of KSND. While KSHL, KPPT, and KSND operate from different towers at Otter Crest, the distance between the transmitter sites is no more than 180 meters. Therefore, there is no cognizable difference in the coverage areas of KSHL, KPPT. and KSND.

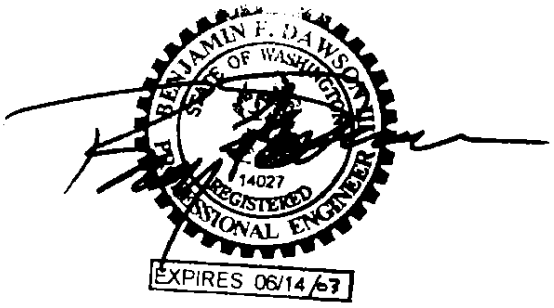
It should be noted in this context that the "flat file" version of the Commission's FM database includes an entry for a construction permit for KPPT (FCC File No. BPH-19970523IH). That construction permit specified a transmitter site 13 km from Otter Crest, but expired on June 25, 2000. A license application to cover BPH-19970523IH was filed but never granted, and was dismissed on June 14, 2002. The KPPT operation at Otter Crest was licensed on February 20, 2002.

The attached map exhibit depicts the service contours of all stations providing service to the Lincoln City loss area. Contours are labeled to correspond with the list of stations on the preceding page, and the numbers denote the number of remaining services in the loss area. This map clearly demonstrates that no portion of the loss area will be left with fewer than 5 remaining services.

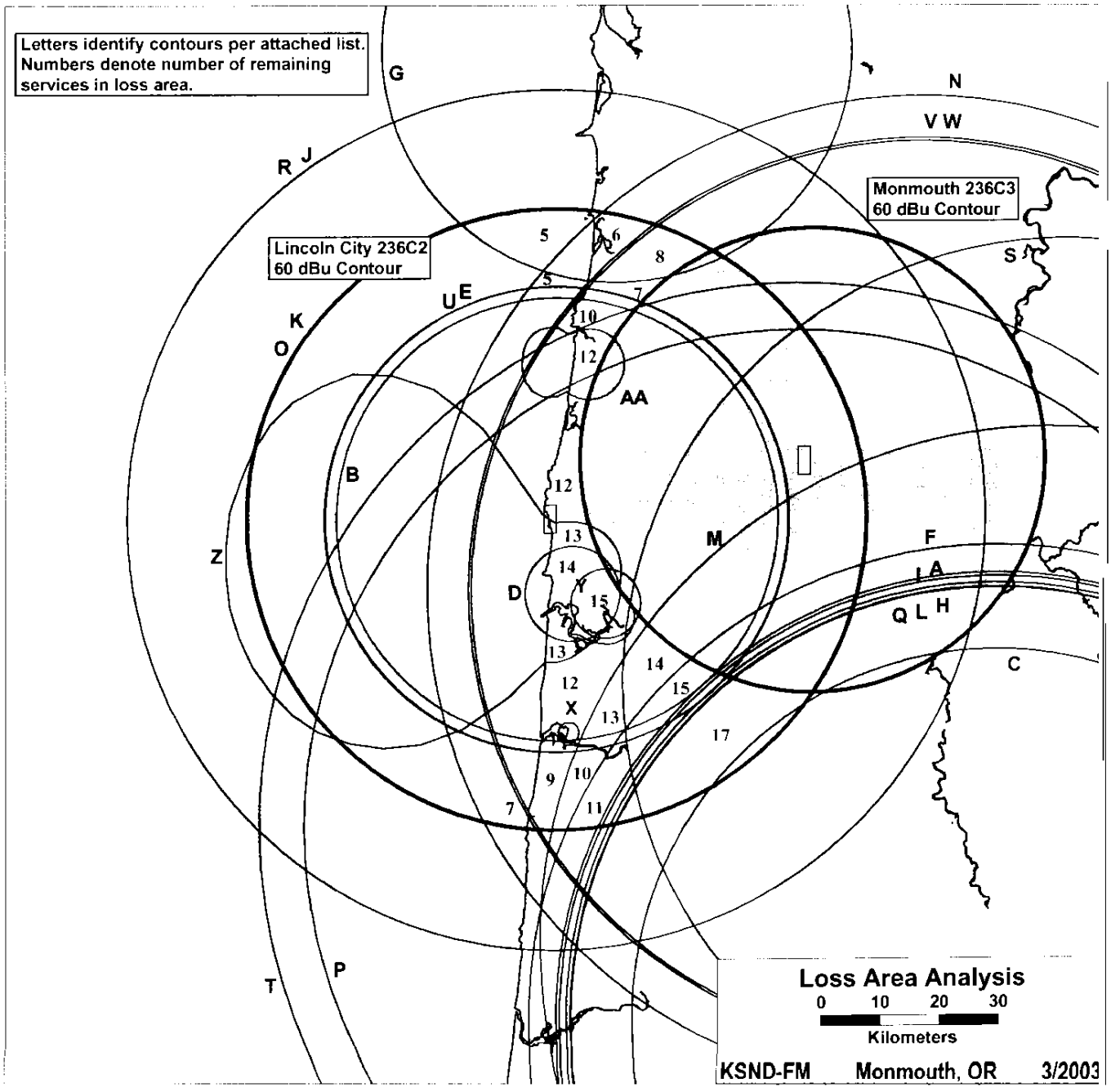
Statement of Engineer

This Engineering Statement has been prepared **by** Erik C. Swanson, EIT, under my direct supervision. All representations herein are true to the best of my knowledge. I am an experienced radio engineer whose qualifications are a matter of record with the Federal Communications Commission. I am a partner in the firm of Hatfield & Dawson Consulting Engineers and am Registered as a Professional Engineer in the States of Washington and California.

Signed this 21" day of March, 2003



Benjamin F. Dawson III, P.E.


Letters identify contours per attached list.
Numbers denote number of remaining services in loss area.
Lincoln City 236C2
60 dBu Contour
Monmouth 236C3
60 dBu Contour
G
N
V W
R J
S
U E
K
O
AA
B
Z
M
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D
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Loss Area Analysis
0 10 20 30
Kilometers
KSND-FM Monmouth, OR 3/2003